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ACCESS TO INFORMATION, PUBLIC PARTICIPATION
IN DECISION-MAKING AND ACCESS TO JUSTICE
IN ENVIRONMENTAL MATTERS

Third meeting

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Item 6 (b) of the provisional agenda

Procedures and mechanisms facilitating
the implementation of the Convention:

Compliance mechanism

REPORT BY THE COMPLIANCE COMMITTEE¹

This document has been prepared by the Compliance Committee pursuant to its mandate set out in section X of decision I/7 of the Meeting of the Parties on review of compliance (ECE/MR.PP/2/Add.8).

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¹ This document was submitted on the above date to allow time for consultations with the parties concerned following the nineteenth meeting of the Compliance Committee (5–7 March 2008) (see sections II and III of this report and its relevant addenda).

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INTRODUCTION

1. Through decision I/7 on the review of compliance, the Parties to the Convention at their first meeting established the Convention's Compliance Committee and agreed on its structure and functions and on procedures for the review of compliance. The work of the Committee in the period from 2002 to early 2005 was reviewed by the Parties at their second meeting (Almaty, Kazakhstan, May 2005). At that meeting, the Parties adopted decision II/5 on review of compliance as well as a number of decisions on compliance by individual Parties.

2. This report is prepared by the Committee pursuant to paragraph 35 of the annex to decision I/7 and paragraph 1 of decision II/5 of the Meeting of the Parties.

I. ISSUES RELATED TO THE FUNCTIONING OF THE COMPLIANCE MECHANISM AND THE COMMITTEE

Membership

3. At its first session, the Meeting of the Parties elected the eight members of the Committee by consensus, taking into account the geographical distribution of membership and its diversity of experience (ECE/MR.PP/2, paras. 44–50).

4. At its second session, the Meeting of the Parties re-elected four of the Committee's members to serve for a further term and elected two new members to replace two members who had stepped down at the time of the second meeting of the Parties (ECE/MR.PP/2005/2, paras. 52–53).

5. One member of the Committee stepped down in March 2006 and was replaced in April of that year by a new member in accordance with the procedure set out in paragraph 10 of the annex to decision I/7 (ECE/MR.PP/WG.1/2006/2, para. 55, and ECE/MR.PP/C.1/2006/4, para. 2).

6. The current members of the Committee are Mr. Merab Barbakadze (Georgia), Mr. Jonas Ebbesson (Sweden), Mr. Sandor Fülop (Hungary), Mr. Jerzy Jendroska (Poland), Mr. Veit Koester (Denmark), Ms. Svitlana Kravchenko (Ukraine), Mr. Gerhard Loibl (Austria) and Mr.

Vadim Ni (Kazakhstan). Mr. Koester has continued to serve as Chair and Ms. Kravchenko as Vice-Chair.

Meetings

7. Since its establishment, the Committee has held nineteen meetings, with one taking place immediately before and a further 11 since the second meeting of the Parties (May 2005, Almaty, Kazakhstan). The meeting reports are available on the Committee's website (www.unece.org/env/pp/compliance.htm):

Eighth meeting (22–25 May 2005) – ECE/MR.PP/C.1/2005/4;
Ninth meeting (12–14 October 2005) – ECE/MR.PP/C.1/2005/6;
Tenth meeting (5–7 December 2005) – ECE/MR.PP/C.1/2005/8;
Eleventh meeting (29–31 March 2006) – ECE/MR.PP/C.1/2006/2;
Twelfth meeting (14–16 June 2006) – ECE/MR.PP/C.1/2006/4;
Thirteenth meeting (4–6 October 2006) – ECE/MR.PP/C.1/2006/6;
Fourteenth meeting (13–15 December 2006) – ECE/MR.PP/C.1/2006/8;
Fifteenth meeting (21–23 March 2007) – ECE/MR.PP/C.1/2007/2;
Sixteenth meeting (13–15 June 2007) – ECE/MR.PP/C.1/2007/4;
Seventeenth meeting (26–28 September 2007) – ECE/MR.PP/C.1/2007/6;
Eighteenth meeting (28–30 November 2007) – ECE/MR.PP/C.1/2007/8;
Nineteenth meeting (5–7 March 2008) – ECE/MR.PP/C.1/2008/2.

8. With the exception of the tenth and twelfth meetings, where one member was absent, all Committee members attended all of the meetings. A number of observers also attended, including from Parties whose compliance was the subject of Committee discussions and from non-governmental organizations (NGOs).

Modus operandi

9. The Committee has continued to rely on the modus operandi it developed in the period 2002–2005 on the basis of decision I/7, which was welcomed by the Parties at their second meeting. During the current intersessional period, the Committee has made several adjustments to these procedures. These adjustments, recorded in the Committee's meeting reports and in the compilation of its operational rules maintained on the website, are outlined below.

10. To ensure transparency and predictability of its procedures, the Committee clarified that its draft findings and recommendations would be made publicly available upon request once they had been transmitted to the Party or Parties concerned and, where applicable, to the communicant. Similarly, any comments received from the Party or Parties concerned or the communicant would be publicly available upon request, unless those submitting the comments requested that they remain embargoed up to the end of the commenting period, in which case they would only be forwarded to the Committee members and would not be made available to the other parties or put in the public domain during that period. At the end of the commenting period, subject to chapter VII of the annex to decision I/7, both the draft findings and recommendations and any comments thereon would be in the public domain (ECE/MR.PP/C.1/2005/8, para. 25).

11. The Committee, prompted by correspondence with some of the communicants on preliminary stages of processing communications, considered the theoretical possibility that a communicant might wish to withdraw its communication. It agreed on a preliminary basis that in such an event, it would have some flexibility to decide whether or not to proceed with consideration of the communication (ECE/M.P.PP/C.1/2005/8, para. 19).

12. The Committee continued to rely on the procedure for carrying out consultations among its members and making some of its decisions through e-mail correspondence for reasons of efficiency and expediency (MP.PP/C.1/2004/4, paras. 39–40, and ECE/M.P.PP/2005/13, para. 9). In this regard, it decided to additionally apply on an ad hoc basis a more streamlined procedure for taking decisions which do not have important substantive implications (e.g. identification of points to raise with a Party concerned when forwarding a communication or resolution of editorial changes in draft texts). In such cases, a proposal circulated on behalf of the Chair would be adopted by default if no member of the Committee had objected to it within a specified period following its circulation. At the same time, the regular procedure for reaching decisions through electronic consultation based on explicit approval would remain the general approach to intersessional decision-making having significant substantive implications (ECE/M.P.PP/C.1/2006/4, para. 40).

13. Also for expediency's sake, the Committee addressed the matter of how to address situations where correspondence purporting to be a communication did not reference the Convention and clearly did not concern compliance with it (ECE/M.P.PP/C.1/2006/8, para. 18). It agreed that if such correspondence was received, the secretariat, in consultation with the Chairperson, was mandated to inform the correspondent that the correspondence would not be treated as a communication and also to inform the correspondent of the requirements for communications. The secretariat should inform the Committee of any such cases, at the latest at the next meeting of the Committee, and make available to it copies of any such correspondence received (ECE/M.P.PP/C.1/2006/8, paras 26–27). In agreeing on this procedure, the Committee noted that the essential defining feature of any communication was that it should concern compliance with the Convention by one or more Parties (para. 18 of the annex to decision I/7).

14. The Committee also considered the issue of its members' participation in various capacity-building initiatives and projects related to the Convention. It agreed that such participation in such initiatives and projects in an individual capacity in countries whose compliance was under review by the Committee did not in itself create a conflict of interest, but that it was possible that in specific individual cases involvement in some activities might lead to a conflict of interest at a later stage (e.g. expert assistance in the development of a legislative act, where such an act subsequently becomes a subject of review by the Committee). The Committee agreed, however, that should such a situation arise, the standard procedures would apply and the individual member concerned would be expected to notify the Committee of any potential conflict of interest (ECE/M.P.PP/C.1/2007/4, para. 28).

15. The Committee has continued to pay close attention to the distinction between applying the admissibility criteria set out in paragraph 20 of the annex to decision I/7 and taking into account the use of domestic remedies by the communicant pursuant to paragraph 21 of the annex to decision I/7 (see ECE/M.P.PP/2005/13, paras. 15 and 21). It has interpreted the latter provision as giving it scope not to proceed with examining a communication where, in its view, insufficient

use has been made of available domestic remedies which are not unreasonably prolonged and which appear to provide an effective and sufficient means of redress, even when the communication is admissible in the sense of not triggering the disqualifying criteria of paragraph 20 (see for example ECE/MR.PP/C.1/2007/8, para. 15). To ensure that procedural aspects of its work take account of the principle of the effective use of limited resources, the Committee considers this possibility not to proceed with such communications as important.

16. The Committee has also had to reconcile the goal of addressing compliance issues in a geographically balanced way (i.e. dividing its attention between Parties in proportion to the extent of the compliance problems) with its obligation to deal with all communications that are submitted in accordance with the agreed procedures. This issue has been highlighted by the fact that 5 out of the first 20 communications concerned the same Party, 4 of these having been submitted by the same organization. The Committee recognizes that it should not automatically follow from this

that 25 per cent of the Committee's efforts should be directed towards one Party and has attempted to address this issue by considering in a holistic way compliance by a Party in respect of which multiple communications have been submitted. The principle of balanced geographical distribution should be taken account of when deciding whether proceed with the examination of a case on merit. It is nonetheless a fact that the direction in which the Committee applies its efforts is largely dictated by the communications received.

17. At its twelfth and thirteenth meetings, the Committee briefly discussed its role in relation to the follow-up on the implementation of decisions of the Meeting of the Parties concerning compliance by specific Parties (ECE/MR.PP/C.1/2006/4, para. 33, and ECE/MR.PP/C.1/2006/6, para. 32), but due to time constraints and other work did not pursue the matter in detail. The Committee notes that decision II/5, para. 2, of the Meeting of the Parties (MoP) establishes a mandate for the Committee "to provide advice and assistance to the Parties concerned as necessary", but that in contrast to the procedures relating to the Committee's handling of submissions, referrals and communications prior to their being referred to the Meeting of the Parties (the "pre-MoP" phase), virtually no guidance is provided by the Meeting of the Parties with respect to the follow-up of the MoP decision (the "post-MoP" phase) in relation to matters such as time frames for response, transparency of correspondence or involvement of the Party or member of the public making the original submission or communication that triggered the pre-MoP phase. The Committee, without having developed new elements in its modus operandi covering this issue, has assumed that the same principles governing the pre-MoP phase should broadly apply to the post-MoP phase.

II. SUBMISSIONS, REFERRALS AND COMMUNICATIONS CONCERNING NON-COMPLIANCE BY PARTIES WITH THE CONVENTION

18. To date, no Party has opted out of the aspect of the compliance mechanism whereby communications from members of the public may be brought before the Committee.

19. Since its establishment, the Committee has received one submission from a Party with regard to compliance by another Party and 23 communications from the public, of which 12 were received between the Committee's seventh to nineteenth meetings. Six of the 23

communications were from individual members of the public and the others were submitted on behalf of NGOs. No Party has made a submission concerning its own compliance, and no referral has been made by the secretariat.² A table showing which provisions had been the subject of allegations and/or findings of non-compliance is annexed to this report.

20. All communications were considered with respect to their admissibility. Of the 12 communications considered since the second meeting of the Parties, one was deemed inadmissible on the grounds of lack of clear and precise information to substantiate relevance to any of the Convention's provisions (ACCC/C/2005/14 (Poland)) and one was considered by the Committee to have been submitted without sufficient use having been made of domestic remedies (ACCC/C/2007/19 (United Kingdom)).

21. The Committee has considered, and made findings and in some cases recommendations, with respect to the substance of nine³ communications, three of which⁴ had been submitted prior to the preparation of (and are therefore reflected in the numbers cited in) the Committee's report to the second meeting of the Parties. The Committee found non-compliance in five cases⁵, though in one of these⁶ the Party concerned took measures to address the cause of non-compliance and is no longer considered to be a state of non-compliance though part of the case is pending. All the decisions of the Committee to date have been made on the basis of consensus.

22. The remaining four⁷ cases are "pending" in the sense that the Committee has yet to reach any conclusions as to whether there is non-compliance, due to the fact that the Parties concerned have not yet provided responses and the deadlines for them to do so have not yet passed. These are not addressed further in this report apart from in the annex.

23. Paragraphs 27 to 45 below outline the main aspects of the communications, as well as the Committee's main findings.

24. Findings and recommendations with regard to communications ACCC/C/2004/06 (Kazakhstan), ACCC/C/2004/08 (Armenia), ACCC/C/2005/11 (Belgium) and ACCC/C/2005/12 (Albania) were adopted well in advance of the third meeting of the Parties. Having considered these in accordance with the procedure set out in decision I/7, the Committee, in accordance with paragraph 36 (b) of decision I/7, had agreed to put forward recommendations to the Parties concerned subject to their agreement to the making of the recommendations. This was done to address the issues raised by the communications without delay and to be able to report to the Meeting of the Parties any progress made by the Parties concerned in implementing the recommendations and, where necessary, improving compliance in the intersessional period. The findings and recommendations are contained in the addenda to the reports of the Committee's respective meetings. At its nineteenth meeting, the Committee reviewed the implementation of the recommendations made by it to the Parties concerned on the basis of information provided by

² A potential referral made by the secretariat in 2004 was superseded by communication ACCC/C/2004/5 and was consequently never registered as a referral (MP.PP/C.1/2004/6, paras. 14–15).

³ Relating to compliance by Albania, Armenia, Belgium, Denmark, Hungary, Kazakhstan, Lithuania, Romania and the European Community.

⁴ Relating to compliance by Armenia, Belgium and Kazakhstan.

⁵ Relating to compliance by Albania, Armenia, Lithuania, Kazakhstan and Romania.

⁶ Relating to compliance by Romania.

⁷ Relating to compliance by France, Kazakhstan, the United Kingdom and the European Community.

them. The conclusions and recommendations resulting from this review are included in the relevant addenda to this report (ECE/MP.PP/2008/5/Add.1, 2, 3 and 5).

25. The Committee concluded review of four other communications in early 2008. Having reviewed these in accordance with the procedure set out in decision I/7, it adopted its findings and, in some cases, recommendations with regard to compliance by these Parties. These are contained in the relevant addenda to this report (ECE/MP.PP/2008/5/Add.4, 6, 7 and 10).

26. The Committee's findings with regard to compliance by Hungary made in the context of review of communication ACCC/C/2005/13, to the effect that the Party concerned was not in non-compliance, were reflected in the body of the report of the Committee's eleventh meeting (ECE/MP.PP/C.1/2006/2, paras 18–22) in the interest of making the most effective use of the Committee's time and given the similarities with its findings with respect to communication ACCC/C/2004/04.

Kazakhstan

27. Communication ACCC/C/2004/06 was made by Ms. Gatina, Mr. Gatin and Ms. Konyushkova of Almaty on 3 September 2004. It concerned the compliance by Kazakhstan with its obligations under article 9, paragraphs 3 and 4, of the Convention in the case of access to justice in appealing the failure of the Almaty Sanitary-Epidemiological Department and Almaty City Territorial Department on Environmental Protection to enforce domestic environmental law with respect to the operation of an industrial facility for storage of cement and coal and production of cement-based materials. Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7, the Committee found that Kazakhstan failed to comply with the requirements of article 9, paragraph 4, in conjunction with article 9, paragraph 3. Noting that the Party concerned had agreed that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee, pursuant to paragraph 36 of the annex to decision I/7, and taking into account the recommendations set out in decision II/5a of the Meeting of the Parties, made a number of recommendations to the Party concerned to be undertaken in the period prior to the third meeting of the Parties. The findings and recommendations of the Committee are contained in an addendum to the report of the twelfth meeting of the Committee (ECE/MP.PP/C.1/2006/4/Add.1). The Committee invited the Party to include in its report to the Meeting of the Parties to be prepared pursuant to paragraph 8 of decision II/5a of the Meeting of the Parties information on the measures taken to implement these recommendations.

28. On 10 May 2007, the Kazakh NGO Green Salvation submitted communication ACCC/C/2007/20 with regard to compliance by Kazakhstan with article 3, paragraph 1, and article 9, paragraph 3. The communication concerned the alleged failure to develop, in accordance with the requirements of national legislation, a regulation setting out public participation procedures, as well as the alleged refusal by the courts to admit appeals against government's failure to act.

29. The Committee considered that while the communication might be admissible, the matters raised in it could be addressed more effectively in the context of implementation by the Party concerned of recommendations contained in decision II/5a of the Meeting of the Parties. It

proposed this approach to the Party concerned and the communicant, neither of which objected. It therefore invited the Party concerned to address the substantive issues raised in the communication in its report to be prepared pursuant to paragraph 8 of decision II/5a.

30. At its nineteenth meeting, the Committee reviewed implementation by the Party concerned of its recommendations made in the context of review of compliance triggered by communication ACCC/C/2004/06 on the basis of the information provided by the Party in its national implementation report (ECE/MR.PP/IR/2008/KAZ) and in its report submitted pursuant to paragraph 8 of decision II/5a of the Meeting of the Parties. Having considered the reports, the Committee found that while certain progress had been made in implementing the recommendations, the Party concerned had not as yet succeeded to bring about compliance with article 9, paragraph 4, in conjunction with article 9, paragraph 3, in particular with respect to the practical possibilities to appeal against a failure by public authorities to act. The Committee has therefore made a number of recommendations to the Meeting of the Parties. The findings and recommendations of the Committee are contained in an addendum to this report (ECE/MR.PP/2008/5/Add.5).

Armenia

31. Communication ACCC/C/2004/08 was made on 20 September 2004 by three Armenian NGOs, the Center for Regional Development/Transparency International Armenia, the Sakharov Armenian Human Rights Protection Center and the Armenian Botanical Society, with regard to compliance by Armenia with its obligations under article 4, paragraphs 1 and 2, article 6, paragraphs 1 to 5 and 7 to 9, article 8 and article 9, paragraph 2, of the Convention. The communication concerned access to information and public participation in the decision-making on modification of land-use designation and zoning and on the leasing of certain plots in an agricultural area of Dalma Orchards as well as availability of appropriate appeal procedures. Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7, the Committee found that Armenia failed to comply with the requirements of article 4, paragraphs 1 and 2, article 6, paragraph 1 (a) in conjunction with annex I, paragraph 20, and, in connection with this, with article 6, paragraphs 2 to 5 and 7 to 9, article 7 and article 9, paragraphs 2 to 4. Noting that the Party concerned had agreed that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee, pursuant to paragraph 36 of the annex to decision I/7, made a number of recommendations to be undertaken in the period prior to the third meeting of the Parties. The Committee's findings and recommendations are contained in the addendum to the report of the Committee's eleventh meeting (ECE/MR.PP/C.1/2006/2/Add.1).

32. At its nineteenth meeting, the Committee reviewed the implementation by the Party concerned of its recommendations on the basis of the information provided by the Party in its national implementation report (ECE/MR.PP/IR/2008/ARM) and in its report submitted at the invitation of the Committee (ECE/MR.PP/C.1/2006/2/Add.1, para. 46). It welcomed the measures undertaken by the Party concerned to implement the recommendations. The Committee noted, however, that the information provided by the Party concerned with regard to the implementation of the findings and recommendations was of a general nature and did not allow the Committee to evaluate in a concrete way the qualitative progress made with regard to implementation of specific recommendations, such as those relating to development of specific

procedures or ensuring that appropriate forms of decisions are used in decision-making on matters subject to articles 6 and 7.

33. While welcoming the progress made by the Party concerned, the Committee considered that it was not in a position to conclude that the Party concerned was no longer in non-compliance with the Convention. It made a number of recommendations to the Meeting of the Parties. The findings and recommendations of the Committee are contained in an addendum to this report (ECE/MR.PP/2008/5/Add.2).

Belgium

34. Communication ACCC/C/2005/11 was made by the Belgian NGO Bond Beter Leefmilieu Vlaanderen VZW on 3 January 2005 with regard to the compliance by Belgium with its obligations under article 2, paragraph 5, article 3, paragraph 1, and article 9, paragraphs 1 to 4, of the Convention in connection with requirements for standing for environmental NGOs before the Belgian judicial bodies in cases concerning construction permits and planning decisions. Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7, the Committee was not convinced that Belgium failed to comply with the Convention, in particular since all the court decisions submitted by the communicant referred to cases initiated before the entry into force of the Convention for Belgium. The Committee noted, however, that if the jurisprudence of the relevant courts was not altered, Belgium would fail to comply with article 9, paragraphs 2 to 4. With the agreement of the Party concerned, the Committee therefore made a number of recommendations to it. The findings and recommendations of the Committee are contained in an addendum to the report of the twelfth meeting of the Committee (ECE/MR.PP/C.1/2006/4/Add.2).

35. On 8 February 2008, the Belgian Government provided the Committee with an update on the implementation of the recommendations. The measures undertaken to implement the recommendations included a roundtable with the participation by Members of Parliament in April 2006; introduction of a new bill aimed at modifying legislation on the Council of State with a view to granting NGOs the right to introduce a collective court action, now under consideration by the Parliament; efforts to introduce another legislative initiative with regard to standing of NGOs under article 9, paragraph 3; and the introduction of the Convention into the training programme for magistrates and legal trainees for 2006 and 2007.

36. The Committee notes with appreciation the initiatives undertaken by Belgium to facilitate implementation of the Convention in the field of access to justice and considered them as effective means of following up on the Committee's recommendations made in the course of review of communication ACCC/C/2005/11. It also welcomes the constructive approach demonstrated by Belgium in the process of review of compliance.

37. The Committee's review of the implementation by Belgium of its recommendations is contained in an addendum to this report (ECE/MR.PP/2008/5/Add.3).

Albania

38. Communication ACCC/C/2005/12 was made by the Albanian NGO Alliance for the Protection of the Vlora Gulf (also translated as Civil Alliance for the Protection of the Vlora

Bay) on 27 April 2005 with regard to compliance by Albania with its obligations under article 3, paragraph 2, article 6, paragraph 2, and article 7 of the Convention in connection with decision-making on the planning of an industrial park comprising, inter alia, oil and gas pipelines, installations for the storage of petroleum, three thermal power plants and a refinery near the lagoon of Narta. Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7, the Committee found that Albania failed to comply with the requirements of article 3, paragraph 1, article 6, paragraphs 3, 4 and 8, and article 7. Noting that the Party concerned had agreed that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee, pursuant to paragraph 36 of the annex to decision I/7, made a number of recommendations to the Party to be undertaken, inter alia, in the period prior to the third meeting of the Parties. The findings and recommendations of the Committee are contained in the addendum to the report of the sixteenth meeting of the Committee (ECE/MR.PP/C.1/2007/4/Add.1).

39. At its nineteenth meeting, the Committee reviewed implementation by the Party concerned of its recommendations on the basis of the information provided by the Party in its national implementation report (ECE/MR.PP/IR/2008/ALB) and in its report submitted at the invitation of the Committee (ECE/MR.PP/C.1/2007/4/Add.1, para. 100). It welcomed the measures undertaken by the Party concerned to implement the recommendations, which, in its opinion, demonstrated some progress made with regard to achieving compliance with articles 3, paragraph 1, and articles 6 and 7. It considered however that it would be premature to conclude that the Party concerned was no longer in non-compliance with the Convention, as the action plan and other relevant measures were still at an early stage of implementation and the Party concerned had had only half a year to implement the recommendations.

40. The Committee made a number of recommendations to the Meeting of the Parties. The findings and recommendations of the Committee are contained in an addendum to this report (ECE/MR.PP/2008/5/Add.1).

Hungary

41. Communication ACCC/C/2005/13 was made by the Hungarian NGO Clean Air Action Group on 18 May 2005 with regard to compliance by Hungary with its obligations under article 6, paragraphs 4 and 7, and article 9, paragraphs 2 and 3, of the Convention in connection with amendments to the Act on the Public Interest and the Development of the Expressway Network. The amendments to the Act had been referred to but were not considered in the Committee's findings and recommendations on ACCC/C/2004/04 (ECE/MR.PP/C.1/2005/2/Add.4). Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7, the Committee did not find that the legislative changes made since it had reached its findings with respect to communication ACCC/C/2004/04 had altered the possibilities for the public to exercise its rights under the Convention in such a way that Hungary was no longer in compliance with the Convention. It noted, however, that the consequences of the changes in the legislation for compliance with the Convention might depend on their practical application. The Committee therefore agreed to recommend that the Government of Hungary keep the matter under review. The findings of the Committee are reflected in the report of its eleventh meeting (ECE/MR.PP/C.1/2006/2, paras. 18–22).

Romania

42. Communication ACCC/C/2005/15 was made by the Romanian NGO Alburnus Maior on 5 July 2005 with regard to compliance by Romania with its obligations under article 6, paragraphs 3, 4, 6, 7 and 8, of the Convention in connection with the decision-making on the environmental impact assessment for the Rosia Montana open-cast gold mine proposal. Having considered the information presented by the parties concerned, the Committee agreed not to proceed with the development of findings and recommendations on the communication with regard to its aspects related to the decision-making process until the environmental agreement procedure in question had been completed. However, it agreed to address separately the issues of a general nature concerning the confidentiality of environmental impact assessment (EIA) studies raised by the communicant in the course of the review of the communication. Having considered this aspect of the communication in accordance with the procedure set out in section VI of the annex to decision I/7, the Committee considered Romania to be in non-compliance with the requirements of article 4, paragraph 1, in conjunction with article 4, paragraph 4, and article 6, paragraph 6, in conjunction with article 4, paragraph 4, in connection with administrative instructions related to classifying parts of the EIA documentation as intellectual property exempt from public access. It issued draft findings and recommendations to the Party concerned and the communicant reflecting this and inviting their comments. The Party concerned responded by informing the Committee of changes in the administrative instructions in question that had been introduced seven months earlier while the compliance review was ongoing. The Committee, while expressing its regret that this information had not been provided earlier, concluded that the Party concerned was no longer in non-compliance with the aforementioned provisions in connection with regulating access to EIA documentation. The findings of the Committee are contained in an addendum to this report (ECE/MP.PP/C.1/2008/5/Add.7).

Lithuania

43. Communication ACCC/C/2006/16 was made by the Lithuanian NGO Kazokiskes Community Association on 13 March 2006 with regard to compliance by Lithuania with its obligations under article 6 and article 9, paragraph 2, of the Convention in connection with the decision-making on the establishment of a landfill in the village of Kazokiskes, Lithuania. Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7, the Committee found that Lithuania failed to comply with the requirements of article 6, paragraphs 2, 3 and 7. Pursuant to paragraph 35 of annex to decision I/7, the Committee made a number of recommendations to the Meeting of the Parties. The findings and recommendations of the Committee are contained in an addendum to this report (ECE/MP.PP/2008/5/Add.6).

European Community

44. Communication ACCC/C/2006/17 was made by the Lithuanian NGO Kazokiskes Community Association on 12 June 2006 with regard to compliance by the European Community with its obligations under article 6, paragraphs 2 and 4, and article 9, paragraph 2, of the Convention in connection with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (IPPC Directive) and of the decision of the European Commission to co-finance a landfill in Kazokiskes, Lithuania. Having considered

the communication in accordance with the procedure set out in section VI of the annex to decision I/7, the Committee did not find the Party concerned to be in non-compliance with the Convention. The findings of the Committee are contained in an addendum to this report (ECE/MR.PP/C.1/2008/5/Add.10).

Denmark

45. Communication ACCC/C/2006/18 was made by Mr. Søren Wium-Andersen on 3 December 2006 with regard to compliance by Denmark with its obligations under article 9, paragraph 3, of the Convention in connection with availability of an appeal procedure to challenge the alleged failure of Denmark to correctly implement the European Community Directive 79/409/EEC on the Conservation of Wild Birds. Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7, the Committee did not find the Party concerned to be in non-compliance with the Convention. The findings of the Committee are contained in an addendum to this report (ECE/MR.PP/2008/5/Add.4).

General conclusions with regard to the process of review of communications

46. The Committee notes with appreciation that the quality of the communications submitted by the members of the public in this intersessional period continued to be good and that, overall, representatives of civil society continued to use the mechanism in a responsible way.

47. The Committee also welcomes the fact that, generally speaking, the working relationship with Parties concerned in the review of compliance triggered by communications has been positive. However, the Committee also notes with some concern that Parties frequently fail to respect the deadlines set out in decision I/7. The Committee strongly urges Parties to respect such deadlines so that it can perform its tasks in a timely and effective manner. It is also important that when requested Parties provide all relevant information to the Committee, so that its deliberations are informed. In one particular case, information which was of central relevance to the issue of compliance was withheld by the Party concerned for more than six months, causing the Committee to spend a considerable amount of time developing findings and recommendations on the basis of crucially incomplete information.

48. In three of the four cases in which the Committee found that there was no non-compliance, it nonetheless proposed putting forward recommendations (in one case directly to the Party concerned during the intersessional period, in the other two to the Meeting of the Parties). It did so in the belief that the compliance mechanism, being of a facilitative and non-judicial character, can contribute to promoting more effective implementation of the Convention even where the Committee reaches a conclusion that there is no non-compliance. The Committee is furthermore of the opinion that there are some situations of compliance which come close to non-compliance, meaning that a small change in approach or, for example, the emergence of certain practices within the existing legal framework could render the Party concerned in non-compliance; and therefore that in some cases, such recommendations, as well as facilitating the Party's efforts to implement the Convention, may have a positive preventive effect, helping to avoid a future lapse into non-compliance. In the "intersessional" case, the Party concerned accepted both the making of recommendations by the Committee and the recommendations themselves. As a consequence,

the Committee's recommendations in that case, developed in consultation with the Party, triggered a number of actions which in the view of the Committee will contribute towards the more effective implementation of the Convention by the Party in question and reduce any risk of future non-compliance in relation to the matter at issue.

49. The Committee does not wish to assert that in all cases where it does not find non-compliance, the Party in question should feel obliged to agree that the Committee may make recommendations, or to their content. However, the Committee would find it regrettable if Parties were to object in principle to the Committee making recommendations simply on grounds that there is no non-compliance. The positive outcome of the only case where the Committee had the possibility to make recommendations suggests that this would be a lost opportunity. Furthermore, having regard to the independent nature of the Committee, the Committee would encourage Parties to recognize the distinction between accepting the Committee's making of recommendations and accepting their content, and that there can be a certain value in a Party accepting the Committee's making of recommendations even while not entirely agreeing with their content.

Recommendations to the Meeting of the Parties with regard to compliance by individual Parties

50. The Committee, pursuant to paragraph 35 of the annex to decision I/7, recommends that the Meeting of the Parties:

- (a) Take note of the main facts of the communications and welcome the consideration and evaluation by the Committee set out in the reports and addenda of the Committee's meetings (ECE/MR.PP/C.1/2006/2/Add.1 (Armenia), ECE/MR.PP/C.1/2006/4/Add.1 (Kazakhstan) and 2 (Belgium), ECE/MR.PP/C.1/2007/4/Add.1 (Albania), ECE/MR.PP/C.1/2006/2, paras. 18–22 (Hungary)) and in four addenda to this report (ECE/MR.PP/2008/5/Add.4, 6, 7 and 10 (Denmark, Lithuania, Romania and European Community));
- (b) Welcome the acceptance by those Parties concerned found by the Committee not be in compliance, and by one Party concerned not found by the Committee not to be in compliance, of the Committee's recommendations made in accordance with paragraph 36 (b) of the annex to decision I/7 and the progress made by the Parties concerned in the intersessional period;
- (c) Endorse the Committee's main findings with regard to compliance and adopt the Committee's recommendations, as set out in the documents ECE/MR.PP/2008/5/Add.1 to 7 and 10 and paragraph 21 of the report on its eleventh meeting (ECE/MR.PP/C.1/2006/2);
- (d) Undertake to review, at its fourth meeting, the implementation of those recommendations adopted with respect to specific Parties, if appropriate, on the basis of input from the Committee.

III. IMPLEMENTATION OF EARLIER DECISIONS OF THE MEETING OF THE PARTIES ON COMPLIANCE BY INDIVIDUAL PARTIES

51. At their second meeting, the Parties to the Convention adopted decision II/5 on review of compliance (ECE/MR.PP/2005/2/Add.6) as well as decision II/5a with respect to compliance by Kazakhstan (ECE/MR.PP/2005/2/Add.7), decision II/5b with respect to compliance by Ukraine (ECE/MR.PP/2005/2/Add.8) and decision II/5c with respect to compliance by Turkmenistan (ECE/MR.PP/2005/2/Add.9).

52. The Meeting of the Parties undertook to review the implementation of the measures with respect to the specific Parties referred to in decisions II/5a, b and c at its third ordinary meeting and with this in mind, requested the Committee to examine these matters in advance of that meeting and to describe the progress made in its report.

53. The Committee considered the matter, *inter alia*, on the basis of the information provided by the three Parties on measures taken and progress achieved in implementation of the respective decisions on compliance. The Committee's conclusions are set out in addenda to this report (ECE/MR.PP/2008/5/Add.5, 8 and 9). The Committee invites the Meeting of the Parties to take note of the updated information, endorse the conclusions and implement the recommendations contained in the three addenda.

IV. GENERAL COMPLIANCE ISSUES

54. The Committee reviewed general matters of compliance pursuant to its mandate set out in decision I/7 and in response to the request of the Meeting of the Parties contained in paragraph 1 of decision II/5 to examine the implementation of the general recommendations set out in that decision in advance of the third meeting of the Parties and to describe the progress made in its report. For this purpose, it reviewed the communications forwarded to it as well as, to the extent possible, the information contained in the national implementation reports and synthesis report and identified a number of more general issues (i.e. not limited to a particular country) that it considers worth bringing to the attention of the Meeting of the Parties.

Confidentiality of information

55. The question of confidentiality of information in the context of EIA procedures has been raised in several communications and has also been addressed in a number of national implementation reports by the Parties. The correct interpretation and application of the exceptions contained in article 4, paragraphs 3 and 4, are central to ensuring that the public has access to environmental information and can effectively participate in the decision-making processes. As the Committee has stated in earlier findings and recommendations (e.g. ECE/MR.PP/C.1/2005/2/Add.3, para. 31), the Convention aims to provide the public concerned with an opportunity to examine relevant details to ensure that public participation is informed and therefore effective. If a competent authority is considering whether it may refuse to disclose environmental information, the possible grounds for refusal are to be interpreted in a restrictive way, taking into account the public interest served by the disclosure. In particular, disclosure of

EIA studies in their entirety should be considered as the rule, with the possibility of exempting parts of them being an exemption to the rule.

Effective means of notification

56. As demonstrated by the national reports submitted by the Parties, there are a significant number of good practices and several advanced practical solutions to effective notification of the public concerned with regard to decision-making. These include notification in several newspapers, using local authorities as mediators, individual notification based on mailing lists, and notification in the locality of the planned activity or at places frequently visited by the public concerned. Unfortunately, countries usually rely on only one of the means of notification. Simultaneous use of several methodologies would often be significantly more effective.

Multiple permits

57. One issue which has been raised by a number of different communications is the fact that for any given activity subject to article 6, a number of different permitting processes may be involved. The Committee has had to address the question as to whether the Convention requires the public participation procedures set out in article 6, paragraphs 2 to 10, to be applied in all, or all environment-related, permitting processes or just some of them.⁸ The Committee's view is that not all the decisions required within national frameworks of regulatory control in relation to activities listed in annex I to the Convention should necessarily be considered as "decisions on whether to permit proposed activities" to which the full range of public participation procedures should apply. On the other hand it does not mean that it would necessarily be sufficient to provide for public participation according to article 6 in only one such decision. In fact, many national frameworks require more than one such permitting decision, and to limit public participation opportunities to only one such decision would not always be sufficient to fulfil the requirements of the Convention. Furthermore, development of large-scale projects often has long span and certain significant elements as projected at an early stage might later require substantial modification. While public participation at an early stage remains crucial, significant modifications of the project's elements might call for further consultations at later stages.

58. The Committee therefore considers that the issue will have to be decided on a contextual basis, taking the legal effects of each decision into account. Of crucial importance in this respect will be to examine to what extent such a decision indeed "permits" the activity in question. If there are more than one such permitting decision, some kind of significance test seems to be the most appropriate way to understand the requirements of the Convention. The test should be: does the permitting decision, or range of permitting decisions, to which all the elements of the public participation procedure set out in article 6, paragraphs 2 to 10, apply embrace all the basic parameters and main environmental implications of the proposed activity in question? If, despite the existence of a public participation procedure or procedures with respect to one or more environment-related permitting decisions, there are other environment-related permitting decisions with regard to the activity in question for which no full-fledged public participation process is foreseen but which are capable of significantly changing the above basic parameters or which address significant environmental aspects of the activity not already covered by the

⁸ The Committee raised a related point in its report to the second meeting of the Parties (ECE/MP.PP/2005/13, para. 41).

permitting decision(s) involving such a public participation process, this could not be said to meet the requirements of the Convention.

Responsibility for providing for public participation

59. The Committee notes that in some countries the developer is given responsibility for organising public participation, including for making available the relevant information and for collecting the comments. However, it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from the relevant public authority, and that comments should be submitted to the relevant public authority (art. 6, para. 2 (d) (iv) and (v), and art. 6, para. 6). While direct communication between the developer and the public concerned is important and indeed promoted by the Convention (art. 6, para. 5), placing undue reliance on the developer to provide for public participation would not be in line with the Convention.

Time frames for public participation

60. The Committee notes that there are considerable differences in time frames provided in national legal frameworks for the public to get acquainted with the documentation and to submit comments. The requirement to provide “reasonable time frames” in article 6, paragraph 3, implies that the public should have sufficient time to get acquainted with the documentation and to submit comments taking into account, inter alia, the nature, complexity and size of the proposed activity. Thus a time frame which may be reasonable for a small simple project with only local impact may well not be reasonable in case of a major complex project. In this context, providing a time frame of only 10 working days for a wide range of types of projects, as revealed to be the case in at least one Party’s jurisdiction, for getting acquainted with the documentation, including the EIA report, and for preparing to participate in the decision-making process concerning a major complex project does not meet the requirement of reasonable time frames in article 6, paragraph 3.

Implementation of the public participation pillar of the Convention

61. The review of compliance by individual Parties, in the Committee’s opinion, indicates that there remain significant difficulties in implementation of the second pillar of the Convention on the national level. In this regard it notes that of 23 communications and 1 submission brought before it, 14 files alleged failures to implement provisions of articles 6 and/or 7 (see table annexed to this report). The Committee considers that implementation of the second pillar of the Convention deserves particular attention of both the Meeting of the Parties and individual Parties with respect to national implementation. The Committee therefore recommends to the Meeting of the Parties to consider undertaking coordinated efforts by the Parties with a view to facilitate implementation of the second pillar of the Convention, in particular through exchange of practical experience, and information on national regulatory and other measures setting out specific procedures.

Access to justice (article 9, paragraph 3)

62. Some of the communications referred to alleged failures by Parties to comply with article 9, paragraph 3, i.e. to ensure the communicants' opportunities to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment. One issue dealt with by the Committee was the scope of discretion given to the Parties in defining criteria for standing for member of the public. While article 9, paragraph 3, refers to "the criteria, if any, laid down in national law", the Convention neither defines these criteria nor sets out the criteria to be avoided. Rather, the Convention is intended to allow a great deal of flexibility in defining which members of the public have access to justice. On the one hand, the Parties are not obliged to establish a system of popular action (*actio popularis*) in their national laws with the effect that anyone can challenge any decision, act or omission relating to the environment. On the other hand, Parties should not take the clause "where they meet the criteria, if any, laid down in its national law" as an excuse for introducing or maintaining criteria that are so strict that they effectively bar all or almost all environmental organizations or other members of the public from challenging acts or omissions that contravene national law relating to the environment. The Convention does not prevent a Party from applying general criteria of a legal interest or requiring demonstration of an individual interest, provided the application of these criteria does not lead to effectively barring all or almost all members of the public from challenging acts and omissions and from availing of effective remedies. Accordingly, the phrase "the criteria, if any, laid down in national law" implies the exercise of self-restraint by the Parties.

63. When evaluating whether a Party complies with article 9, paragraph 3, the Committee pays attention to the general picture, i.e. to whether national law effectively has such blocking consequences for members of the public in general, including environmental organizations, or if there are remedies available for them to challenge the act or omission in question. In this evaluation, article 9, paragraph 3, should be read in conjunction with articles 1 to 3, and in the light of the purpose reflected in the preamble that "effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced". The Committee found support for this interpretation in paragraph 16 of decision II/2 of the Meeting of the Parties on promoting effective access to justice, which invites those Parties which choose to apply criteria in the exercise of their discretion under article 9, paragraph 3, "to take fully into account the objective of the Convention to guarantee access to justice".

64. In some countries, a special category of NGOs operating in the public interest has been created and only those NGOs falling in this category have standing in administrative cases, including in matters related to the environment. However, even where such a special category of legal status has been in place for a long time, very few NGOs actually achieve it.

65. The Committee has also given consideration to what is to be understood by "national law" in article 9, paragraph 3, with regard to the European Union (EU) Member States. The Committee notes that, in different ways, European Community legislation constitutes a part of national law of the EU Member States. It also notes that article 9, paragraph 3, applies to the European Community as a Party, and that the reference to "national law" should therefore be

understood as the domestic law of the Party concerned.⁹ While the impact of European Community law in the national laws of the EU Member States depends on the form and scope of the legislation in question, in some cases national courts and authorities are obliged to consider EC directives relating to the environment even when they have not been fully transposed by a Member State. For these reasons, in the context of article 9, paragraph 3, applicable European Community law relating to the environment should be considered to be part of the domestic, national law of a Member State.

Financial and other obstacles to access to justice for non-governmental organizations

66. Many general efforts to support environmental NGOs through establishment of general financial support schemes or simplification of the registration processes have been reported, inter alia, in the national implementation reports. However, certain specific obstacles exist, in particular in relation to access to justice. While general legal aid schemes appear to exist in many countries, often only natural persons can benefit from them. With costs remaining one of the significant obstacles to access to justice, Parties may wish to consider how to resolve difficulties which NGOs experience in obtaining access to support schemes.

International financial institutions

67. In the course of its review of compliance by Albania that was triggered by communication ACCC/C/2005/12 (see paras. 38–40), the Committee considered the role of international financial institutions (IFIs) in facilitating the implementation of the Convention at the national level by Parties. In this regard, the Committee noted that while the ultimate responsibility for implementation of and compliance with the provisions of the Convention lies in the hands of individual Parties, IFIs are often in a unique position to stimulate proper application of the access to information and public participation procedures by national authorities. In this regard, the Committee notes that such institutions often have their own sets of requirements with regard to public participation criteria that are applied to projects in which they are involved. Such requirements are in many aspects similar to the obligations that Parties have under the Convention, but, in some cases, can also go beyond the level of detail afforded by the national legislation. The relevant requirements of the IFIs might not always cover the entire scope of obligations set out in the Convention. However, when these are applied to projects implemented in the countries that are Parties to the Convention, the existing obligations of such Parties should of course be taken into account. Therefore in the Committee's view, cooperation between the bodies of the Convention and such institutions could be beneficial for all those concerned. The Committee recommends that the Meeting of the Parties consider ways of establishing close cooperation between the bodies of the Convention and the IFIs operating in the region, such as the World Bank, the European Bank for Reconstruction and Development and the European Investment Bank.

⁹ In the text of the Protocol on Pollutant Release and Transfer Registers (PRTRs), it is made explicit that with respect to the obligations under the Protocol on Parties that are regional economic integration organizations, "national" and "nationwide" should be construed as referring to the region in question unless otherwise indicated (art. 2, para. 10).

Capacity-building and awareness-raising

68. The Committee welcomes the significant progress which has been made with regard to awareness-raising among the judiciary and legal professionals, in particular through the initiatives undertaken under the Task Force on Access to Justice as well as measures taken by some individual Parties. At the same time, it notes that very few awareness-raising measures for officials from authorities other than environmental ministries have been reported.

V. REPORTING REQUIREMENTS

69. During the intersessional period, the Committee carried out an analysis of the implementation reports submitted under the first reporting cycle, including the four reports submitted after the second meeting of the Parties. The purpose of the analysis was to identify key lessons emerging from the first reporting cycle, both in relation to substantive implementation challenges (especially in the field of access to justice, which was widely perceived to present the greatest challenges) and in relation to the reporting mechanism itself. Some of the conclusions relating to substantive challenges are reflected in the previous section.

70. As regards the reporting mechanism, the Committee concluded that it was generally working well and did not require any radical changes. However, to facilitate the process of preparation of the national reports by the Parties, the Committee, pursuant to its mandate under decision I/7, annex, paragraph 13(c), prepared a guidance document on the implementation of the reporting requirements in decisions I/8 and II/10 with respect to the second reporting cycle (ECE/MR.PP/WG.1/2007/L.4). The Committee's guidance in particular addresses issues of timing, presentation, length and content, in the latter case with a view to filling gaps identified in the review of reports submitted in the first reporting cycle. It includes an annex containing a non-prescriptive checklist of issues that the Committee considers could merit being addressed in greater detail in the implementation reports. The guidance also provides suggestions as to the modalities of reflecting in the report new information and emphasizes the value of making available user-friendly consolidated texts of the reports.

71. The guidance document was subsequently endorsed by the Working Group of the Parties (ECE/MR.PP/WG.1/2007/2, para. 55).

72. In accordance with its mandate under decision I/7 (annex, para. 13 (c)), the Committee has monitored and assessed the implementation by Parties of their obligations under the reporting requirements of decision I/8 in the current reporting cycle. Specifically, it has looked into whether and how the Parties prepared their national implementation reports, whether reports were submitted in a timely manner, the quality of the information provided and the level of transparency and consultation in preparing the reports.

73. Having considered the reports submitted by the Parties, the Committee notes with appreciation that many of them relied on the guidance in preparing their national reports.

74. Many of the Parties who submitted national implementation reports also relied on the use of track changes as a methodology to identify new information not already reported in the previous reporting cycle.

75. A small number of Parties reported comprehensively on the ways they had addressed the items on the indicative checklist included in the annex to the guidance. However, most selected those items on the checklist of most relevance or interest to them and provided valuable information in this respect, including with regard to the practical implementation.

76. According to the terms of decision II/10 of the Meeting of the Parties, the deadline for submitting national implementation reports to the secretariat in the first reporting cycle was 14 December 2007. The Committee notes that of the 41 States for which the Convention was in force at that time, only eight submitted national implementation reports on time.¹⁰ Fifteen more reports were submitted with some delay (up to one month) and 12 were submitted with significant delay (more than one month). Of these, three¹¹ were submitted so late that it was not possible for them to be taken into account in the synthesis report or in the preparation of this report.¹²

77. The small number of Parties that submitted reports on time is somewhat disappointing. Late submission of the reports poses practical problems for the secretariat in its task of preparing the synthesis report and processing the documentation for the meeting of the Parties in a timely manner. A commonly cited reason for the delay in the submission of the reports was that Governments needed time to allow for meaningful public consultation on the draft report. However, the Committee notes that the precise deadline for submission of the reports was known since the seventh meeting of the Working Group of the Parties in May 2007 and that the timeline for the preparation and consultation process was endorsed by the Working Group at that meeting. The Parties therefore had ample opportunity to initiate and conclude the proper public consultation process with a view to timely submission of the reports. Failure to submit reports within the deadlines specified in paragraph 9 of decision II/10 constitutes a failure to comply with the reporting requirements under the Convention.

78. While most of the reports followed the suggested length, several were excessively long when first submitted and had to be reduced, which led to delays in processing them and required additional resources in translation costs and staff time. Furthermore, the disparity in the length of the reports also led to a disparity in the level of detail and difficulties with comparative review and preparation of the synthesis report by the secretariat.

79. A significant number of Parties that submitted reports in one of the official languages of the Convention failed to meet the requirement in paragraph 4 of decision I/8 to also submit the report in their national language (where different). The purpose of this requirement, in the understanding of the Committee, is to ensure that members of the public in the country in

¹⁰ Of these, one was significantly over-length and was subsequently re-submitted in somewhat shorter form. A second arrived incomplete and had to be re-submitted for technical reasons.

¹¹ Greece, the United Kingdom and the European Community.

¹² Fuller information on the dates of submission of the implementation reports is available at http://www.unece.org/env/pp/reports_implementation_2008.htm.

question have the opportunity to review the final submitted report.¹³ The significance of a failure to meet this requirement clearly varies from one country to another, and thus some flexibility in interpreting the requirement might be appropriate. For example, in countries where one or other of the official languages of the Convention is almost universally understood (e.g. in the subregion of Eastern Europe, Caucasus and Central Asia), a failure to conduct the process in the national language might not have negative consequences. It would also be a good practice for each Party to circulate the final version(s) of the report to the stakeholders who were consulted in its preparation.¹⁴

80. The Committee notes with concern that Croatia, Lithuania, Luxembourg, Portugal, Romania and Spain had failed to submit reports at all by the time of completion of the present report. This is regrettable. Article 10, paragraph 2, implies a legal obligation of regular reporting by the Parties, and decisions I/8 and II/10, adopted by consensus by the Meeting of the Parties, specify the detailed reporting requirements. A failure to submit implementation reports by some Parties impedes effective monitoring of implementation and exchange of valuable information between the Parties. Furthermore, the reports are also an important source of background information for the process of the review of compliance.

81. The Committee therefore recommends the Meeting of the Parties to underline the importance of complying with the reporting requirements. In the light of the clear obligations in the Convention to submit national reports on a regular basis, the Committee recommends that the Meeting of the Parties recognize that Parties having not submitted such reports are not in compliance with article 10, paragraph 2, as implemented by decisions I/8 and II/10 of the Meeting of the Parties.

82. The Committee also recommends that the Meeting requests those Parties that failed to submit their national implementation reports, and that were Parties at the time of the deadline for submission of the implementation reports, to submit their reports to the secretariat, *inter alia* for forwarding to the Committee, within three months of the date of the meeting.

83. The Committee furthermore recommends to the Meeting of the Parties to endorse the guidance on the preparation of implementation reports prepared by the Committee and endorsed by the Working Group of the Parties, and to urge the Parties to adhere to the suggested maximum length of 10,700 words.

VI. OTHER ISSUES

84. In May 2006, the Chair of the Committee sent a letter to the Chair of the Working Group on PRTRs raising a number of points for consideration in the context of the Working Group's efforts to prepare a draft decision establishing a compliance review mechanism under the Protocol on PRTRs. In the letter, he had attempted to convey some lessons learned on the basis

¹³A similar point may be made in relation to the preparation of the reports. The Committee assumes that in most countries, the process of consulting with the public would require that the draft report be in the national language.

¹⁴A proposal to this effect was made by European ECO-Forum at the ninth meeting of the Working Group of the Parties (ECE/MR.PP/WG.1/2008/2, para. 65).

of the Committee's first-hand experience with the Convention's compliance mechanism, which could be taken into account if the Meeting of the Parties to the Protocol chose to establish a similar mechanism. The letter had been circulated and presented at the third meeting of the Working Group (17–19 May 2006) and posted on the website.

Annex

PROVISIONS OF THE CONVENTION ALLEGED OR FOUND NOT TO HAVE BEEN COMPLIED WITH

Article	1	2	3	4	5	6	7	8	9
Paragraph	1	2	3	4	5	6	7	8	9
C/01	A								
	F			█			█		
C/02	A								
	F								
S/01- C/03	A	█							
	F			█					
C/04	A								
	F								
C/05	A								
	F		█	█					
C/06	A								
	F								
C/07	A								
	F								
C/08	A								
	F				█				
C/09	A	█							
	F								
C/10	A	█	█	█					
	F								

Article Paragraph	1	2					3					4					5					6					7		8		9								
	1	2	3	4	5	1	2	3	4	5	6	7	8	9	12	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	8	9	10	11	1	2	3	4	5
C/11	A																																						
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C/12	A																																						
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C/22	A																																						
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C/23	A																																						
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 Alleged by the communicant or the submitting Party not to have been complied with

 Found by the Committee not to have been complied with

Number	Submission/ referral/communication	Party concerned	Received	Status	Ref. document	Concluded
C/01	Communication ACCC/C/2004/01	Kazakhstan	07.02.2004	Findings adopted	ECE/MR.PP/C.1/2005/2/Add.1	18.02.2005
C/02	Communication ACCC/C/2004/02	Kazakhstan	17.03.2004	Findings adopted	ECE/MR.PP/C.1/2005/2/Add.2	18.02.2005
S/01	Submission ACCC/S/2004/01	Ukraine	07.06.2004	Findings adopted	ECE/MR.PP/C.1/2005/2/Add.3	18.02.2005
C/03	Communication ACCC/C/2004/03	Ukraine	06.05.2004	Findings adopted	ECE/MR.PP/C.1/2005/2/Add.3	18.02.2005
C/04	Communication ACCC/C/2004/04	Hungary	07.05.2004	Findings adopted	ECE/MR.PP/C.1/2005/2/Add.4	18.02.2005
C/05	Communication ACCC/C/2004/05	Turkmenistan	10.05.2004	Findings adopted	ECE/MR.PP/C.1/2005/2/Add.5	18.02.2005
C/06	Communication ACCC/C/2004/06	Kazakhstan	03.09.2004	Findings adopted	ECE/MR.PP/C.1/2006/4/Add.1	16.06.2006
C/07	Communication ACCC/C/2004/07	Poland	06.09.2004	Not admissible	MP.PP/C.1/2004/6	24.09.2004
C/08	Communication ACCC/C/2004/08	Armenia	20.09.2004	Findings adopted	ECE/MR.PP/C.1/2006/2/Add.1	31.03.2006
C/09	Communication ACCC/C/2004/09	Armenia	22.09.2004	Not admissible	MP.PP/C.1/2004/6	24.09.2004
C/10	Communication ACCC/C/2004/10	Kazakhstan	12.10.2004	Not admissible	ECE/MR.PP/C.1/2005/2	18.02.2005
C/11	Communication ACCC/C/2005/11	Belgium	03.01.2005	Findings adopted	ECE/MR.PP/C.1/2006/4/Add.2	16.06.2006
C/12	Communication ACCC/C/2005/12	Albania	27.04.2005	Findings adopted	ECE/MR.PP/2007/4/Add.1	15.06.2007
C/13	Communication ACCC/C/2005/13	Hungary	18.05.2005	Findings adopted	ECE/MR.PP/C.1/2006/2	31.03.2006
C/14	Communication ACCC/C/2005/14	Poland	04.07.2005	Not admissible	ECE/MR.PP/C.1/2006/2	31.03.2008
C/15	Communication ACCC/C/2005/15	Romania	05.07.2005	Findings adopted ¹⁵	ECE/MR.PP/2008/5/Add.7	07.03.2008
C/16	Communication ACCC/C/2006/16	Lithuania	13.03.2006	Findings adopted	ECE/MR.PP/2008/5/Add.6	07.03.2008
C/17	Communication ACCC/C/2006/17	European Community	12.06.2006	Findings adopted	ECE/MR.PP/2008/5/Add.10	29.04.2008
C/18	Communication ACCC/C/2006/18	Denmark	03.12.2006	Findings adopted	ECE/MR.PP/2008/5/Add.4	18.04.2008
C/19	Communication ACCC/C/2007/19	United Kingdom	24.04.2007	Not admissible	ECE/MR.PP/C.1/2007/8	30.11.2007
C/20	Communication ACCC/C/2007/20	Kazakhstan	10.05.2007	Linked to C/06	ECE/MR.PP/2008/5/Add.5	01.04.2008
C/21	Communication ACCC/C/2007/21	European Community	14.08.2007	Under review	n/a	n/a
C/22	Communication ACCC/C/2007/22	France	26.12.2007	Under review	n/a	n/a
C/23	Communication ACCC/C/2008/23	United Kingdom	21.02.2008	Under review	n/a	n/a

¹⁵ Findings of the Committee address only part of the allegations made in this communication. The Committee has agreed not to proceed with certain aspects of the communication until the environmental agreement procedure in question has been completed.